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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,136	02/14/2002	Hideki Yamauchi	065933-0235	2912

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WASHINGTON, DC 20005-3096

EXAMINER
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YIMAM, HARUN M

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/077,136

Applicant(s)

YAMAUCHI ET AL.

Examiner

Harun M. Yimam

Art Unit

2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 2-4,6-10,12-14 and 16-21.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see continuation sheet).  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

**HATIRAN  
PRIMARY EXAMINER**

In response to applicants' argument (page 7, 2nd paragraph) that Christopoulos does not indicate hardware performance of the network itself, applicants should note that Christopoulos explicitly discloses that the control unit (transcoder 125 in figure 1) requests transcoder hints (i.e., bit rate, resolution, image cropping—paragraph 0039, lines 5-26) from the transmission unit (server 110 in figure 1) on the basis of a measured value of the transmission rate of a network (based upon link characteristics and/or network characteristics—paragraph 0038, lines 4-11). Therefore, Christopoulos' disclosure reads on the claimed limitation.

In response to applicants' argument (page 7, 3rd paragraph) that Christopoulos neither discloses nor suggests the notion of controlling the amount of image data to be transmitted in accordance with the measured value or the obtained by measuring the transmission rate of previously transmitted data, applicants should note that that's exactly what Christopoulos teaches (see paragraphs, 0038-0040). Specifically, Christopoulos discloses that the stored image is transmitted to clients with reduced bandwidth capabilities (paragraph 0039, lines 5-11) upon determining the characteristics of the network (paragraph 0038, lines 4-11).

Applicants argue (page 8, 1st paragraph) that the Examiner did not establish a prima facie case of obviousness regarding claims 14 and 21. In response to applicants' argument, applicants should note that the Examiner has provided a prima facie case of obviousness by establishing the three basic criteria as follows:

First, the Examiner provided suggestions or motivation to combine the references as described in the final office action dated 02/10/2006.

Secondly, one of ordinary skill in the art would reasonably expect the combination of Christopoulos and Ejiri to succeed because (i) both systems are directed to image transmitting systems and (ii) the controlling of data to be received by monitoring the amount of stored data taught by Ejiri is typical found in everyday data receiving and storing systems. For example, a digital video recording unit (DVR) constantly monitors how much data is stored to determine the possibility of receiving and recoding more data. Therefore, the controlling of data to be received by monitoring the amount of stored data as taught by the combined cited prior art is sufficient basis for reasonable expectation of success.

Thirdly, the Examiner indicated that the prior art references teach all the claimed limitations.

In response to applicants' argument (page 10, 3rd paragraph) that Ejiri neither discloses nor suggests the notion of controlling the amount of image data to be received in accordance with the amount of data stored in an input buffer or a decoder, monitoring the amount of data received, and terminating the transmission of the image data when the received apparatus receives a predetermined component of the image data, applicants should note that Ejiri's disclosure of preventing buffer overflow or underflow reads on the claimed limitations (paragraph 0040, lines 1-7). By definition, to prevent buffer overflow, the amount of image data to be received is controlled in accordance with the amount of data stored in an input buffer or a decoder, the amount of data received is monitored, and the transmission of the image data is terminated when the received apparatus receives a predetermined component of the image data.

  
HAI TRAN  
PRIMARY EXAMINER